IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 256 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARJIVAN MANJIVAN GOR - Appellant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SURESH M SHAH for Appellant
MR KT DAVE AGP for Respondents Nos. 1 & 2.
MR DA BAMBHANIA for Respondent No. 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/11/2006

ORAL JUDGMENT

1. Learned counsel for the appellant after arguing the matter for some time submitted that in view

of the findings recorded by the two Courts below he may be allowed to withdraw the appeal and the suit but he may not be left remedyless and the Court may be pleased to make an observation in favour of the appellant-plaintiff that the appellant would be entitled to challenge the order passed by the Collector whereunder the Collector did not grant permission to the respondent-society to allot the plot in favour of the plaintiff.

2. After hearing the learned counsel for the parties and taking into consideration the fact that the suit has been dismissed by the two Courts below on the question of jurisdiction and at this stage the appellant has realized that the suit is likely to be dismissed on that ground, if they are agreeable to withdraw the suit, then permission to withdraw the suit must be granted. Consequently the orders passed by the two Courts below are set aside. The permission to withdraw the suit is granted.

3. However, I would certainly reserve the liberty in favour of the appellant that if he is still

aggrieved with the order passed by the Collector whereunder the Collector did not accept the proposal of the society for allotting the plot in favour of the appellant, he shall be entitled to challenge the said order before the appropriate forum in appropriate proceedings and he would also be entitled to inform the said forum that he could approach the said forum after a long lapse of time because of filing of the suit and pendency of the appeal which stands disposed of today.

4. The appeal is disposed of accordingly. No costs.

(R.S.GARG, J.)

*mithabhai